

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 4807/DEL/2019 [A.Y 2014-15]

The Dy. C.I.T
Central Circle
Karnal, Haryana

Vs.

Dwarkhadhis Buildwell Pvt Ltd
C/o N.K. Jain, Adv. Naya Bazar
Bhiwani, Haryana

PAN : AACCD 1951 E

(Applicant)

(Respondent)

Appellant by : Shri Gautam Jain, Adv

Department By : Shri T. James Singson, CIT-DR

Date of Hearing : 10.08.2023

Date of Pronouncement : 16.08.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) -3 Gurgaon dated 20.03.2019 pertaining to Assessment Year
2014-15.

2. The sum and substance of the grievance of the Revenue is that the ld. CIT(A) erred in deleting the addition of Rs. 8.42 crores by applying Percentage of Completion Method [POCM].

3. Briefly stated, the facts of the case are that a search and seizure operation was conducted at the residential as well as business premises of the assessee group and accordingly, statutory proceedings were initiated against the assessee.

4. During the course of scrutiny assessment proceedings, field enquiries of the project were undertaken by the department and field enquiries revealed that 70% of stock in trade has been sold as against 75% of booking amount received.

5. Taking a leaf out of these facts, the Assessing Officer formed a belief that POCM is applicable and to justify this, the Assessing Officer referred to the Accounting Standard for real estate project issued by Institute of Chartered Accountant of India which provided that w.e.f. 01.04.2012 income has to be accrued in respect of all real estate on POCM.

6. The Assessing Officer accordingly, recomputed profitability of the assessee applying POCM and made addition of Rs. 8.42 crores.

7. The assessee carried the matter before the ld. CIT(A) and convinced the ld. CIT(A) that the Project Completion Method is applicable. It was further contended that the assessee has been consistently following the PCM since A.Y 2010-11 and in all the preceding years, method of accounting has been duly accepted by the Assessing Officer in the assessment framed u/s 143(3) r.w.s 153A of the Act.

8. Following the principles of res judicata as enunciated by the Hon'ble Supreme Court in the case of Excel Industries Ltd 358 ITR 295 and drawing support from the decision of the Hon'ble Jurisdictional High Court in the case of Paras Buildtech India (P) Ltd 382 ITR 630, the ld. CIT(A) deleted the addition.

9. Before us, the ld. DR strongly supported the findings of the Assessing Officer and read the relevant operative part.

10. Per contra, the ld. counsel for the assessee reiterated what has been stated before the ld. CIT(A).

11. We have carefully perused the orders of the authorities below. The method of accounting adopted by the assessee can be understood from the following chart:

2

3.2 Furthermore it is submitted that the method of accounting adopted by revenue contrary to principle of consistency as would be evident from tabular chart hereunder:

Sr. No.	Assessment Year	Advance against sale of property		Sale booked (Revenue from operations) (Rs. in crores)	Method of Revenue Recognition followed	Assessment u/s
		Opening Balance (Rs. in crores)	Closing Balance (Rs. in crores)			
i)	2010-11	33.10	33.78	NIL	Project Completion	143(3) r.w.s. 153A(1)(b)
ii)	2011-12	33.78	36.29	NIL		143(3) r.w.s. 153A(1)(b)
iii)	2012-13	36.29	42.22	NIL		143(3) r.w.s. 153A(1)(b)
iv)	2013-14	42.22	47.99	NIL		143(3) r.w.s. 153A(1)(b)
v)	2014-15	47.99	55.45	NIL		143(3) r.w.s. 153A(1)(b)
vi)	2015-16	55.45	56.22	NIL		143(1)(a)
vii)	2016-17	56.22	56.20	7.83		143(1)(a)
viii)	2017-18	56.20	50.24	3.99		143(3)
ix)	2018-19	50.24	41.57	6.78		143(3)
x)	2019-20	41.57	40.16	4.88		143(1)(a)
xi)	2020-21	40.16	32.60	17.01		143(1)(a)
xii)	2021-22	32.60	26.19	19.53		143(1)(a)

12. From the above, it is clear that prior to the impugned A.Y 2014-15, in the case of all previous A.Ys, assessment has been framed after thorough scrutiny and method of accounting has been accepted by the

Assessing Officer. On such facts the ratio laid down by the Hon'ble Supreme Court enunciating Rule of Consistency squarely applies.

13. In so far as applicability of Accounting Standard Guidance Note is concerned, it is pertinent to mention that the same has not been notified by the Central Government for the purpose of section 145(2) of the Act. Therefore, no adverse inference can be drawn. For this proposition, we draw support from the decision of the Hon'ble High Court of Delhi in the case of Para Buildtech India (P) Ltd [supra] wherein the Hon'ble High Court has held as under:

- (i) Section 145(1) of the Act stated that income chargeable under the head 'Profit and Gains of Business or Profession' shall be computed in accordance with either cash or mercantile system of accounting 'regularly employed by the assessee'. It is only with effect from 1st April 2015 that a change has been brought about in section 145(2) which permits the Central govt. To notify in the official Gazette from time to time the income computation and disclosure standards to be followed by any class of assesses or in respect of any class of income that change in prospective and in any event does not apply to the case in hand.
- (ii) The settled legal position as far as section 145 of the Act is concerned is that it is not open to an AO to reject the accounts of an assessee unless he comes to a determination that notified accounting standards have not been regularly followed by the assessee.
- (iii) The Accounting Standards of ICAI did not have any statutory recognition under the Act although it was binding under the Companies Act, 1956.
- (iv) The method of accounting followed by assessee in the present case, i.e. Project Completion Method was certainly one of the recognised methods and has been consistently followed by it.

14. It would also be pertinent to refer to the decision of the Hon'ble Supreme Court in the case of Bilhari Investment Pvt Ltd 299 ITR 1 wherein the Hon'ble Supreme Court had to decide on choice of method of accounting and the Hon'ble Supreme Court held as under:

"15. Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. Completed contract method is one such method. Similarly, percentage of completion method is another such method.

16. Under completed contract method, the revenue is not recognised until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to P & L account. The said method determines results only when contract is completed. This method leads to objective assessment of the results of the contract.

17. On the other hand, percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognised under this method is determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract.

18. The above indicates the difference between completed contract method and percentage of completion method.

19. In the judgment of the Bombay High Court in Taparia Tools Ltd. (supra) it has been held that in every case of substitution of one method by another method, the burden is on the Department to prove that the method in vogue is not correct and it distorts the profits of a particular year. Under the mercantile system of accounting based on the concept of accrual, the method of accounting followed by the assessee is relevant. In the present case, there is no finding recorded by the AO that the completed contract method distorts the profits of a particular year. Moreover, as held in various judgments, the Chit Scheme is one integrated scheme spread over a period of time, sometimes exceeding 12 months. We have examined computation of tax effect in these cases and we find that the entire exercise is revenue neutral, particularly when the scheme is read as one integrated scheme spread over a period of time.

In the past, the Department had accepted the completed contract method and because of such acceptance, the assessee, in these cases, have followed the same method of accounting, particularly in the context of chit discount. Every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted. It is only in those cases where the Department records a finding that the method adopted by the assessee results in distortion of profits, the Department can insist on substitution of the existing method. Further, in the present cases, we find from the various statements produced before us, that the entire exercise, arising out of

change of method from completed contract method to deferred revenue expenditure, is revenue neutral.

Therefore, there was no reason to interfere with the impugned judgment of the High Court and, accordingly, the instant appeal was to be dismissed."

15. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we do not find any reason to interfere with the findings of the Id. CIT(A).

16. In the result, the appeal of the Revenue in ITA No. 4807/DEL/2019 is dismissed.

The order is pronounced in the open court on 16.08.2023.

Sd/-

[YOGESH KUMAR U.S]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 16th August, 2023.

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	